

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHAWNTELL CURRY,

Petitioner,

ORDER

08-cv-188-slc

v.

C. HOLINKA (Warden),

Respondent.

This petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 was dismissed on April 29, 2008, for lack of jurisdiction. Specifically, I found that because petitioner's claims must be brought in a motion under 28 U.S.C. § 2255 and because he had presented no argument why § 2255 is an ineffective remedy, this court lacks jurisdiction to entertain his claims under § 2241. Now petitioner has filed a notice of appeal and requests leave to proceed in forma pauperis on appeal. The request will be denied because I must certify that petitioner's appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

In his appeal, petitioner is challenging this court's decision that his claim is not one that qualifies for the "actual innocence" exception in Taylor v. Gilkey, 314 F.3d 832, 835-836 (7th Cir. 2002). As I told petitioner in the April 29 order, he has had two opportunities to raise this claim; first, in the appeal of his criminal conviction and second,

when he filed his first § 2255 motion. Petitioner's failure to present his argument previously does not give him another opportunity to attack his sentence. Although I understand petitioner's frustration at being jurisdictionally barred from raising his challenges here, particularly in view of the fact that he already has been unsuccessful in obtaining a favorable ruling on his § 2255 motion in the sentencing court, there is no legal merit to the claim he wishes to raise on appeal. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED and I certify that petitioner's appeal is not taken in good faith.

Entered this 8th day of May, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge